

STATE OF MAINE

BOARD OF OVERSEERS OF THE BAR	]	Report of the
	]	Grievance Commission
v	]	(Panel C)
	]	File #85-179
HERSCHEL M. LERMAN	]	

On April 9, 1987, Panel C of the Grievance Commission, comprised of Diane Cutler, David B. Soule, Jr., Esq., and Joan Phillips Sandy, Esq., Chairperson, met at Waterville to hear the matter of Board of Overseers of the Bar v. Herschel M. Lerman, Esq. The Board was represented by Karen G. Kingsley, Assistant Bar Counsel. The Respondent was present and was represented by Franklin Stearns, Esq. The hearing was open to the public, and was recorded.

Rebecca Nelson, a former client of the Respondent, Joseph Nelson, her husband, and the Respondent, Mr. Lerman, were sworn as witnesses and subsequently testified.

The pleadings before the Panel included the Petition dated January 21, 1987, and Respondent's Answer of February 12, 1987. The Petition had been properly served and Notice of Hearing properly given. Petitioner's Exhibits A and B, consisting of copies of file notes, correspondence, and the divorce decree and the settlement agreement pertaining to Mrs. Nelson's divorce, were attached to the Petition, and were offered and admitted into evidence without objection.

At the close of the hearing, the parties were afforded an opportunity to make closing statements.

In accordance with standard Grievance Commission procedures, Assistant Bar Counsel gave the Panel an envelope containing a statement with respect to the official record of the Board of Overseers of the Bar regarding any prior discipline of the Respondent, which envelope was to be opened and considered by the Panel only in the event that the Panel determined that a violation of the Bar Rules had occurred. Subsequently, the Panel opened the envelope and learned that the Respondent had no prior disciplinary record.

At the conclusion of the hearing, the Panel met to deliberate and at that time reached the following findings and conclusions, based upon the entire record of the proceedings.

FINDINGS

1. The Panel finds that on or about February 9, 1985, Respondent agreed to represent Mrs. Nelson (then Mrs. Budd) in her divorce action, and that on that date they had a conference in his office.
2. During the course of the office conference the Respondent engaged Mrs. Nelson in a discussion of sexual matters that was not pertinent to his

representation of her, that made her uncomfortable, and which constituted improper professional conduct and conduct unworthy of an attorney.

3. During the course of his representation of Mrs. Nelson, from February through April, 1985, the Respondent attempted to pursue a social relationship with Mrs. Nelson, although she indicated to him that she was not interested. The Panel finds that his actions in calling her on the telephone and asking her out on dates, when she indicated she was not interested in a social relationship with him, was an attempt to take advantage of a position of power as her attorney, and was conduct unworthy of an attorney.

4. Although Mrs. Nelson was upset with Mr. Lerman's conduct, she had paid him \$50.00 and did not then have any more money with which to retain another lawyer. Also, she did not know that she could change lawyers without having to start the divorce from the beginning.

5. When Mrs. Nelson retained Respondent, she was nineteen years old, and turned twenty just before the court date for her divorce. She had never previously retained an attorney.

6. During the course of Respondent's representation of Mrs. Nelson, she requested copies of correspondence regarding her divorce, but these were not provided, although after the divorce was concluded, Mrs. Nelson did receive some papers from her file.

7. During the course of the divorce settlement negotiations, Mrs. Nelson requested that the Respondent obtain copies of bills to prove the large outstanding indebtedness her husband was allegedly incurring as part of the settlement. Mr. Lerman never provide any such evidence to her.

8. Shortly before the divorce hearing, which was held on April 26, 1985, the Respondent and Mrs. Nelson discussed the proposed settlement agreement on the telephone.

9. On April 26, 1985, the Respondent met Mrs. Nelson at Court and showed her the proposed settlement agreement. This was the first time she had been shown the document.

10. While Mrs. Nelson was reading the settlement agreement for the first time, the Respondent told her to just sign it, that it was just what they had previously discussed, and that it was time to go into court. Relying on Mr. Lerman's assurance that it was as they had discussed, Mrs. Nelson signed the agreement and proceeded with the divorce that morning.

11. Mr. Lerman never reviewed the actual settlement agreement document with Mrs. Nelson before she signed it.

12. Mrs. Nelson believed that as part of the divorce settlement she was to receive certain items of personal property. However, the written agreement provided that she would receive the personal items "currently located at her residence". Subsequent to the divorce, her ex-husband refused to let her have certain items of a personal nature that were located at his residence.

### CONCLUSIONS

Based on the foregoing findings and the record before it, the Panel concludes that Respondent violated Maine Bar Rule 3.6 (a) 3 in that he did not adequately keep his client informed and he neglected to obtain the information regarding indebtedness as requested by his client. Also, he failed to go over the Settlement Agreement in detail with his client prior to urging her to sign it.

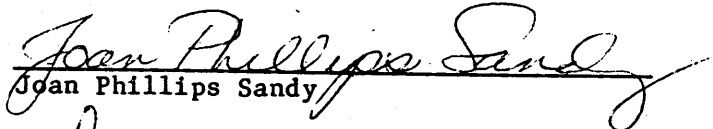
The Panel also concludes that Respondent engaged in conduct unworthy of an attorney by his improper conversations of a sexual nature with his client and by his attempts to pursue a social relationship against her wishes, thereby attempting to misuse his perceived advantage of power as her attorney, thereby violating Maine Bar Rule 3.1.

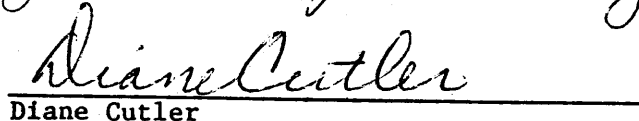
### DETERMINATION

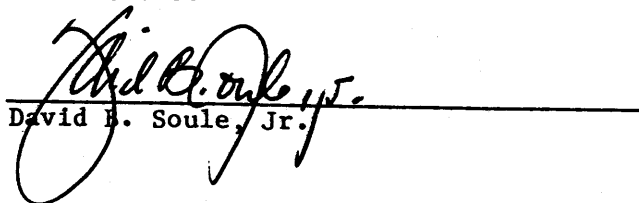
The Panel determines that the seriousness of the misconduct in this instance warrants a reprimand and directs Bar Counsel to deliver the reprimand to the Respondent.

Dated the 30th of April, 1987.

Panel C of the Grievance Commission

  
Joan Phillips Sandy

  
Diane Cutler

  
David B. Soule, Jr.